SEARCH AND SEIZURE

MILLAW 5.2

Terminal Objective

- Upon completion of this unit of instruction, the student will demonstrate knowledge of the fundamental principles and administrative procedures pertaining to military law.

ENABLING OBJECTIVES

- 5.22 Identify the sources of the law of search and seizure in the military
- 5.23 Define Search
- 5.24 Identify the purpose of the law of search and seizure
- 5.25 Describe the factors that must be present for the law of search and seizure

ENABLING OBJECTIVES

- 5.26 Identify the authority for searches in the U.S. Navy
- 5.27 Define probable cause
- 5.28 Define seizure
- 5.29 List the items that may be legally seized
- 5.30 Define the basic rule of admissibility

Question and Answers Policy

3 SOURCES OF MILITARY SEARCH AND SEIZURE LAW

I. U.S. Constitution, Fourth Amendment

II The Manual for Courts-Martial (MCM)

III. Case law

SEARCH

- “Quest for incriminating evidence”
- Types of evidence that can be searched for:
  - Contraband
  - Evidence of a Crime
    - Fruits gained from the crime
    - Instrumentalities

INSPECTIONS

- “Examination of the whole or part of the unit, organization, installation, vessel, aircraft, or vehicle”
- Primary purpose is to determine and ensure the security, military fitness, or good order and discipline
- “looking at something”

WELFARE INSPECTIONS

- Permission not required
- Preplanned
- Be consistent
- Conducted due to circumstances
- Evidence obtained from inspections is admissible at trial. (contraband)

PURPOSE OF LAW OF SEARCH AND SEIZURE

- Protects the right of privacy guaranteed to all people.
- Forbids the use of evidence obtained during illegal search & seizure at trial.

FOR LAW OF SEARCH AND SEIZURE TO APPLY:

1. There must be a quest for evidence.

2. Search must be conducted, instigated, or participated in by a government agent.

3. Search must be in an area where there is a reasonable expectation of privacy.

EXPECTATION OF PRIVACY

- Our physical body
- Personal Vehicles
- A desk, toolbox, briefcase if member has exclusive control/access
- Wall lockers or foot lockers

NO EXPECTATION OF PRIVACY

- Government Vehicles
- Government Aircraft
- Common areas within a command
- Health and Pay records
- Training and Service Records
- Computers Files
- Abandoned Property
- Curbside Garbage

AUTHORIZATION

- The ONLY individual who may authorize a search is the commanding officer having jurisdiction of the person, place, or property to be searched.
- The commanding officer **CANNOT** delegate the power to authorize a search.

PROBABLE CAUSE

- Reasonable belief that a crime has been committed

AND

- the person, property, or evidence sought is located at the place to be searched
- Reasonable Belief = Factual basis + Credibility of Information

PROBABLE CAUSE

- CO will only authorize a search if probable cause has been established. Probable cause is required when conducting a search in an area with a right to privacy.

KEY QUESTIONS TO ISSUE SEARCH AUTHORIZATION

1. Does CO have JURISDICTION?
2. What is the EVIDENCE to be searched for?
3. Where is the evidence?
4. What is the FACTUAL BASIS to believe it’s there?
5. Why is that factual basis reliable?

SEIZURE

- Taking into possession an item of evidence in conjunction with an investigation of criminal activity.
- Contraband is anything inherently illegal to possess. It may always be seized, but whether it can be used as evidence depends on how the search was conducted.

CAN LEGALLY SEIZE…

- Contraband
- Evidence of Crime
- People (Apprehension)
- Abandoned Property
- Government Property
- Unlawful Weapons

BASIC RULE OF ADMISSIBILITY

- For evidence to be admissible at trial, both the search and seizure must be legal.

WHEN SEARCH IS OVER

- Legally the search is over when the evidence listed on the SEARCH ORDER is found.
- If a search is continued, any evidence found will be inadmissible and integrity of the entire search may be jeopardized.

Chain of Custody

- It is a written record of who has had access to seized evidence.
- The chain of custody cannot be broken or the seized evidence will be inadmissible at courts- martial.